

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JEFFREY M. COVER,

Petitioner,

V.

JEFFREY UTTECHT,

Respondent.

CASE NO. 3:19-CV-5064-BHS-DWC

ORDER GRANTING EXTENSION
OF TIME AND DENYING
APPOINTED COUNSEL

The District Court has referred this action filed under 28 U.S.C. § 2254 to United States Magistrate Judge David W. Christel. Currently before the Court are Petitioner Jeffrey M. Cover’s “Fact Related to 28 U.S.C. 2254 re: Motion to Amend” (“Motion for Extension of Time”) and Motion for Appointment of Counsel. Dkt. 39, 40. The Court has reviewed the relevant record and grants Petitioner’s Motion for Extension of Time (Dkt. 39) and denies Petitioner’s Motion for Appointment of Counsel (Dkt. 40).

I. Extension of Time (Dkt. 39)

On July 27, 2021, the Court granted Petitioner leave to file a motion to amend with a proposed amended petition on or before August 27, 2021. Dkt. 38. On August 19, 2021,

1 Petitioner filed the Motion for Extension of Time, requesting an extension of time to file a
 2 motion to amend with an amended petition. Dkt. 39. Respondent does not oppose an extension of
 3 time. Dkt. 41. After considering the relevant record, the Motion for Extension to Time (Dkt. 39)
 4 is granted as follows: Petitioner shall have until October 26, 2021 to file a motion to amend with
 5 a proposed amended petition.

6 As this case has been pending since January 2019, the Court declines to grant additional
 7 extensions of time absent a showing of extraordinary circumstances.

8 **II. Appointment of Counsel (Dkt. 40)**

9 Petitioner also moves for the appointment of counsel. Dkt. 40.¹ There is no right
 10 appointed counsel in cases brought under 28 U.S.C. § 2254 unless an evidentiary hearing is
 11 required or such appointment is necessary for the effective utilization of discovery procedures.
 12 *See McCleskey v. Zant*, 499 U.S. 467, 495 (1991); *United States v. Duarte-Higareda*, 68 F.3d
 13 369, 370 (9th Cir. 1995); *United States v. Angelone*, 894 F.2d 1129, 1130 (9th Cir. 1990);
 14 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983); Rules Governing Section 2254 Cases in
 15 the United States District Courts 6(a) and 8(c). The Court may appoint counsel “at any stage of
 16 the case if the interest of justice so requires.” *Weygandt*, 718 F.2d at 954. In deciding whether to
 17 appoint counsel, the Court “must evaluate the likelihood of success on the merits as well as the
 18 ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues
 19 involved.” *Id.*

20 In this case, Petitioner asserts he needs counsel for this action primarily because he no
 21 longer has access to the help of a writ writer and he has limited access to the law library due to
 22 COVID-19 restrictions. Dkt. 40. At this time, the Court has not determined an evidentiary

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 24 ¹ Petitioner previously sought court-appointed counsel, which was denied on January 12, 2021. Dkt. 24, 26.

1 hearing will be necessary, and Petitioner does not contend counsel is necessary to utilize
2 discovery procedures. *See* Rules Governing Section 2254 Cases in the United States District
3 Courts 6(a) and 8(c). Additionally, Petitioner effectively articulated the grounds for relief raised
4 in the Petition, litigated his personal restraint petition in the state courts, and successfully
5 engaged in litigating this case, all of which establish Petitioner has been able to file appropriate
6 motions and understand filings in this case. The grounds raised in the Petition are not factually or
7 legally complex. *See* Dkt. 3. Petitioner has also not shown he is likely to succeed on the merits of
8 this case. Therefore, Petitioner has not shown he is unable to litigate this case without the
9 assistance of counsel because of his limited access to a writ writer and the law library.

10 The Court finds Petitioner has not shown appointment of counsel is appropriate at this
11 time. Accordingly, the Motion for Appointment of Counsel (Dkt. 40) is denied.

12 **III. Conclusion**

13 For the above stated reasons, the Motion for Extension of Time (Dkt. 39) is granted and the
14 Motion for Appointment of Counsel (Dkt. 40) is denied.

15 Petitioner shall have until October 26, 2021 to file a motion to amend with a proposed
16 amended petition. The motion to amend shall be noted in accordance with Local Civil Rule 7.

17 If Petitioner is granted leave to amend, the Court will direct Respondent to file a
18 supplemental answer. If Petitioner does not file a motion to amend on or before October 26,
19 2021, the Court will proceed with only the grounds raised in the Petition (Dkt. 3).

20 The Clerk is directed to re-note the Petition (Dkt. 3) for consideration on October 29, 2021.

21 Dated this 7th day of September, 2021.

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David W. Christel
United States Magistrate Judge